

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

APPLETON PAPERS INC. and NCR CORP.,

Plaintiffs,

v.

Case No. 08-C-16

GEORGE A. WHITING PAPER CO., et al.,

Defendants.

ORDER

Plaintiffs have filed an expedited motion under Civil Local Rule 7.4 seeking an amendment to the scheduling order. They ask that the dates for expert disclosures, discovery cutoff and dispositive motions be extended. The basis for the motion is Plaintiffs' assertion that they are unable to produce meaningful expert reports because the discovery needed for such reports will not have been disclosed by the May 22 deadline. Plaintiffs also assert that additional depositions are required before their expert disclosures can be made.

The Defendants note that there was never any intention that all discovery be completed prior to expert reports because the case management order ("CMO") allows discovery to continue until August. Thus, if Plaintiffs wanted to take the needed discovery earlier they should have done so. Instead, Defendants assert, Plaintiffs have bogged the case down with discovery not relevant to the Phase I issues described in the CMO. Plaintiffs dispute this in their reply brief.

Although the Defendants have agreed to some scheduling modifications (in the alternative to their argument for denying Plaintiffs' motion outright), it appears that the only way to allow some extension without jeopardizing the subsequent dates would be to allow a brief extension of two

weeks and to slightly alter the remaining schedule partly in line with the parties' other proposals. This would allow Plaintiffs until June 5 to file expert reports. Defendants would then have until July 10 for their disclosures, and responsive expert reports would be due August 7. To accommodate this compressed schedule, the discovery cutoff and dispositive motion date will be extended by two weeks to August 28. The other dates remain in effect. Although I am sensitive to the Plaintiffs' concerns that the discovery they need for their experts might not be sufficient, I am satisfied that any major subsequent developments that arise in discovery may be accounted for by way of supplemental reports.

The motion to modify the CMO is granted in part and denied in part, as set forth above. The motion for leave to file a sur-reply is granted.

SO ORDERED this 11th day of May, 2009.

s/ William C. Griesbach
William C. Griesbach
United States District Judge